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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/676,876 | 09/29/2000 | Joseph Librizzi | JBP-521 | 3307 |

7590 10/05/2006

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EXAMINER

GEORGE, KONATA M

ART UNIT PAPER NUMBER

1616

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|---------------------------------|--|
| Office Action Summary | Application No. 09/676,876 | Applicant(s) LIBRIZZI ET AL. | |
| | Examiner Konata M. George | Art Unit 1616 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 38-43 and 45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 38-43 and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 38-43 and 45 are pending in this application.

Action Summary

1. The rejection of claims 38-43 and 45 under 35 U.S.C. 103(a) over Okazaki et al. in view of the acknowledged reference of Tanida et al. is being maintained for the reasons stated in the previous office action. Rejection is repeated below.
2. The rejection of claims 38, 39 and 41 under 35 U.S.C. 103(a) over Korbely et al. in view of the acknowledged reference of Tanida et al. is hereby withdrawn with respect to applicants arguments.

Response to Arguments

3. Applicant's arguments filed July 13, 2006 have been fully considered but they are not persuasive.

Applicants argue that the prior art reference of Okazaki et al. fails to teach of suggest applicant claimed method of soothing a mammal comprising the composition as claimed. Examiner disagrees. Okazaki et al. teaches the composition as claimed see office action below. With respect to a method of soothing, Okazaki et al. is directed towards a sedative effect providing fragrance modifier. Webster's New World Dictionary 3rd College Edition, page 1214, defines a sedative (1) tending to soothe or quiet. Therefore, the composition of Okazaki et al. has the ability to soothe although not explicitly stated. Determination of the claimed concentrations; is within the skill of the

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ordinary worker as part of the process of normal optimization to achieve the desired sedative effect.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claims 38-43 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okazaki et al. (US 6,268,333) in view of acknowledged prior art reference of Tanida et al. (EP 0 978 273).

Determination of the scope and content of the prior art

(MPEP §2141.01)

Okazaki et al. discloses in column 1, lines 30-43 that it the combination of lavender and chamomile has been used in drinks, baths or as herbs for having a

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sedative effect and inducing sound sleep. It is also disclosed a composition further comprising an odoriferous compound (sandalwood) in addition to the lavender and chamomile.

Tanida et al. teach that slgA levels can be significantly raised by the use of a perfume composition. The perfume is in a concentration of 0.5%, preferably 1%, wherein the perfume could be a mixed perfume having a floral bouquet note (See paragraphs 0015-0017). Paragraph 0020 teach that the composition can be in various forms such as cream, lotion, cream and the like. Paragraph 0022 teaches the experimental model.

Ascertainment of the difference between the prior art and the claims

(MPEP §2141.02)

The prior art does not disclose the claimed concentration or the limitation of reducing cortisol levels and/or increasing slgA levels.

Finding of prima facie obviousness

Rational and Motivation (MPEP §2142-2143)

It would have been obvious to one of ordinary skill in the art at the time the invention was to use the teachings of Tanida that mixed perfumes having a floral bouquet note or woody citrus note or a harval citrus note increases the slgA levels in subjects in the invention of Okasaki which discloses a bath product having floral compounds (e.g. lavender and chamomile). The expected result would be a bath product containing

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floral compounds (e.g. lavender and chamomile) having increased the sIgA levels in subjects. With respect to the claimed concentrations, absent a clear showing of criticality, the determination of particular concentrations is within the skill of the ordinary worker as part of the process of normal optimization to achieve the desired results of the claimed composition.

Conclusion

5. Claims 38-43 and 45 remain rejected.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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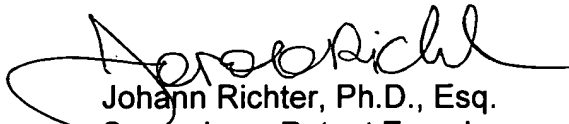
Telephone Inquiries

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Konata M. George, whose telephone number is 571-272-0613. The examiner can normally be reached from 8AM to 6:30PM Monday to Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, can be reached at 571-272-0646. The fax phone numbers for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have question on access to the Private Pair system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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